

8/27/03

Peter Miller

2, Heighley Cottage
Morpeth
NE61 3BY
Great Britain
T/Fx: 01670 519246

03.09.03

The Commissioner
US Patent Office
Washington DC
USA 20231

US Application No. 09/646764

PCT No. PCt/AU98/00199

Applicant: Peter Miller

Re. : PO Letter dated 26 August 2003 with Decision in response to the Applicant's second petition to withdraw holding of abandonment

Quote from Decision::

1st paragraph under "BACKGROUND"

"the early procedural background for this application was set forth in the decision mailed by this Office on 20 April 2001. In that decision Applicant's 20 December 2000 petition to withdraw the first holding of abandonment was granted. The decision noted however, that applicant had not filed a complete declaration in compliance with 37CFR §1.497.

Specifically, the decision noted that the filed declaration was missing page 1. The decision directed the national stage processing branch of the Office of PCT Operations to issue a Notification OF Missing Requirements requiring applicant to submit a complete declaration and the surcharge for filing the declaration later than thirty months after the international filing date."

End quote

APPLICANT'S RESPONSE

- The decision 20 April 2001 did not specifically note that the filed declaration was missing page 1.
- The decision 20 April 2002 did not instruct the applicant to submit a complete declaration but "required submission of a declaration in compliance with 37 CFR §1.497"
- The Notification of Missing Requirements allegedly forwarded on 03 May 2001 and received as a copy for first time on 2 September 03 by the Applicant purports to instruct that the current oath or declaration does not comply with CFR 1497 (a)(b) for reasons indicated in attached PCT/DO/EO/917. This was not included in the PO mail with mailing date 26 August 2003 meaning that the Applicant has still not received the official notification with details of the alleged non-compliance! For the Applicant this is proof that the purported PO mail with date 03 May 2001 was in fact not forwarded and the Applicant will persist in this opinion until the PO brings proof to the contrary.
The Applicant still maintains that the Declaration (PTO/SB/01) already completed and forwarded with the Application fully complies with the 37 CFR 1.497 including (a)(4). This apparent central language is fully covered by the following language in the PTO/SB/01 of the Applicant already timely filed.:

- ***"I hereby declare that all statements made herein of my own knowledge are true and that all statements made or information and belief are believed to be true"*** -
- ***whereby the I named myself as the SOLE OR FIRST INVENTOR of the patent applied for.***

In fact this version of the blank form consisting of one single page was forwarded to the Applicant accompanying a completed OCT/DO/917 by the Lamont Hunter of the USPTO NATIONAL STAGE PROCESSING DEPARTMENT on 30 Aug. 1999 concerning my application PCT/AU96/00441 as the SOLE requirement for compliance regarding OATH OR DECLARATION. This completed form was forwarded to the USPTO 20 Dec. 99 and found complete compliance.

Both completed forms are attached to this communication for your perusal.

- The Notification dated 03 May 2001 further instructs that a surcharge will be imposed for an untimely submitted oath or declaration.
The Applicant upholds his opinion that the declaration or oath **was timely submitted** by the Applicant.

CONCLUSION

The Applicant requests the immediate withdrawal of the present holding of ABANDONMENT and an expedited entry of the Applicant's Patent Application into the examination phase after what can be considered as an inordinate and unnecessary delay.



MILLER

Attachments:

1. NOTIFICATION OF DEFECTIVE OATH OR DECLARATION 30 Aug. 99
2. Previously completed PTO/SB/01 dated 20 Dec. 99 that found complete compliance regarding the oath or declaration.